

**APPLICATION OF JOHN JACKSON MILLER
TO THE APPELLATE JUDICIAL COMMISSION FOR THE
JUDGES HOLLIGER, SPINDEN AND DANDURAND VACANCIES
MISSOURI COURT OF APPEALS, WESTERN DISTRICT**

***RESPONSES TO THESE QUESTIONS WILL BE MADE PUBLIC IF THE
APPLICANT IS NOMINATED FOR ANY OF THESE THREE VACANCIES***

1. Present principal occupation or title: Attorney and Equity Member, Swanson Midgley, LLC, Kansas City, Missouri.

2. Are you at least 30 years of age? Yes (x) No ()

3. (a) How many years have you been a citizen of the United States? 50 years

(b) How many consecutive years immediately preceding your application have you been a qualified voter of Missouri? 32 years

4. State the date you were admitted to The Missouri Bar and whether your license is in good standing. If not, explain in detail.

I was admitted to the Missouri Bar in September, 1984. My license is in good standing.

5. List any other states, courts, or agencies in which you are licensed as an attorney.

I also am licensed in: the State of Kansas; the Federal District Courts for the Western and Eastern Districts of Missouri, and the District of Kansas; and the United States Courts of Appeals for the Eighth, Tenth, and Eleventh Circuits.

6. (a) State the name and address of all colleges and universities attended, other than law school, together with the dates and degrees received.

I attended the University of Missouri, Columbia, Missouri from 1977-1981. I received a BJ in Journalism and an AB with Honors in Economics.

- (b) List/describe any college or university activities, scholastic achievements and other awards or honors you think are relevant to the commission's decision.

I graduated summa cum laude, with a 3.95 cumulative grade point average. I was a member of the following honorary societies: Phi Beta Kappa, Phi Kappa Phi, Omicron Delta Kappa, and Phi Eta Sigma. I was a member of the Student Senate and the Symphonic Band.

7. (a) State the name and address of all law schools attended together with the dates and degrees received.

I attended the University of Missouri School of Law, Columbia, Missouri, from 1981-1984. I received my JD degree in May, 1984.

- (b) List/describe any law school activities, scholastic achievements and other awards or honors you think are relevant to the commission's decision.

I was the Editor in Chief of the Missouri Law Review for the 1983-1984 school year. I was on the Dean's List for academic achievement during each semester of law school. I was a member of the Delta Theta Phi law fraternity.

8. State, in chronological order (starting with the earliest employment) (a) significant non-law-related employment prior to law school and (b) all employment from the beginning of law school to the present. To the extent reasonably available to you, include the name and address of each employer and the dates of employment, and, for legal employment, describe the positions you have held, e.g., associate, partner, law clerk, general counsel.

During my undergraduate studies, I was employed by KFRU Radio in Columbia, Missouri as a reporter/announcer; I worked as a teaching assistant in the Economics Department; and I worked as a teaching assistant at KBIA Radio in the Journalism School. During law school, I worked at KOMU-TV in Columbia, Missouri as a sports reporter and news anchor. I was employed as a summer law clerk at the Watkins, Boulware, Lucas & Miner law firm in St. Joseph, Missouri following my first year of law school. I worked as a summer law clerk at the Stinson, Mag & Fizzell law firm in Kansas City, Missouri following my second year of law school.

From July, 1984 to October, 1986, I worked as a law clerk for the Honorable Joseph E. Stevens, Jr. at the United States District Court for the Western District of Missouri, Kansas City, Missouri. From October, 1986 to November, 1991 I was employed as an associate at the law firm of Stinson, Mag & Fizzell in Kansas City, Missouri. From November, 1991 to December, 1993 I was an associate with the law firm of Nygaard & Associates in Overland Park, Kansas. From January, 1994 to October, 1996 I was a partner in the law firm of Nygaard & Miller, Overland Park, Kansas.

From October, 1996 to June, 2006, I practiced law as the Law Firm of John J. Miller, P.C. My office was located at 132nd and Metcalf in Overland Park, Kansas from 1996 until September, 2001, and thereafter was located at 4770 North Belleview, Kansas City, Missouri.

In June, 2006, I joined the law firm of Swanson Midgley, LLC, Kansas City, Missouri, as a non-equity member of the firm. On January 1, 2007 I became an equity member of the firm, and on January 1, 2008 I was elected as one of three members of the firm's Executive Committee. I continue to practice today with Swanson Midgley, and our office is located at 4600 Madison, Suite 1100, Kansas City, Missouri 64112.

9. If you were a student at any school from which you were suspended, placed on probation, or expelled by school authorities, for any reason, describe the circumstances.

None.

10. Describe the nature of your experience in trial and appellate courts and explain how they demonstrate the quality of your legal work. *(You either may take as much space as you need here or attach your response on separate sheets).* Include in your response:
- a) **Appellate Experience:** Please include a representative list of cases you have briefed and/or argued (if you are a judge, include representative cases from your practice prior to your judicial appointment) including, to the extent reasonably available to you, the style, date, and court and, if published, the citation; identify the client(s) you represented and opposing counsel; give a one-paragraph description of the case and your role.
 - b) **Trial-Level Experience:** Please include a representative list of cases and/or administrative hearings you have handled (if you are a judge, include representative cases from your practice prior to your judicial appointment) including, to the extent reasonably available to you, the style, date, and court; identify who you represented and opposing counsel; state whether the case was disposed of following a jury trial, bench trial or at what other stage; give a one-paragraph description of the case and your role.
 - c) **Judicial Experience:** If you are a judge, commissioner, or are serving or have served in other judicial capacity, please describe the nature and extent of your judicial responsibilities, including the dates you have served as a judge at each level, the types of dockets you have handled, and any special expertise you have developed that you believe is relevant to your qualifications for the position for which you are applying.

I have been in the private practice of law for almost 25 years, and I believe my practice has been unusually diverse. I've served as a federal court law clerk, worked in one of the largest law firms in Missouri, worked for two smaller firms, and I've practiced on my own. Although my practice in recent years has emphasized securities and commercial litigation, during my career I've represented clients in virtually every type of matter, including domestic, criminal, estate, antitrust, and patent infringement. I have represented both plaintiffs and defendants, which have ranged from Fortune 500 companies to indigents. I have achieved seven-figure recoveries for my clients, and I've successfully defended other clients against multi-million dollar claims. As lead counsel, I have tried a half-dozen jury trials, at least two-dozen bench trials, and more than 50 securities and commercial arbitrations. I believe the broad scope of my practice, and the research, writing, and oral advocacy my practice has required, would serve me well as a member of the judiciary.

At the appellate level, I have either been lead counsel or participated actively in cases before the United States Courts of Appeals for the Eighth, Tenth and Eleventh Circuits, the Missouri Court of Appeals, the Kansas Supreme Court, and the Kansas Court of Appeals. The following is a sample of my recent appellate work, in reverse chronological order:

1. *Packard v. Credit Solutions of America, Inc.*, Kansas Court of Appeals No. 08-100231A, currently on appeal—I represent Credit Solutions on appeal of the Wyandotte County District Court’s denial of Credit Solutions’ motion to compel arbitration of a commercial contract dispute. Mr. and Mrs. Packard are represented by Donald Huelson, Olathe, Kansas. I prepared Appellant’s brief, which I have submitted with my application. I am lead counsel and presently scheduled to argue the cause for Credit Solutions.

2. *Riley v. United States*, 486 F.3d 1030 (8th Cir. 2007). I represented Mr. Riley in his appeal of the Eastern District of Missouri’s dismissal of his Federal Tort Claims Act suit. The United States was represented by the Office of the United States Attorney, St. Louis, Missouri. I participated actively with my co-counsel in preparation of Appellant’s brief but did not argue the cause.

3. *United States Beef Corp. v. Genuik & Labor and Industrial Relations Commission*, 134 S.W.3d 83 (Mo. App. 2004). I represented United States Beef in its appeal of an adverse benefits decision by the Labor and Industrial Relations Commission. I participated in the preparation and filing of Appellant’s brief.

4. *Sampson v. Biomat, Inc., et al.*, 77 P.3d 1009 (Kan. App. 2003). I represented Blaine and Margaret Sampson on appeal of the Johnson County District Court’s entry of summary judgment in favor of Defendants on the Sampsons’ claim for alleged violation of the Kansas Securities Act. Defendants were represented by Bill Sampson, Shook, Hardy & Bacon, Overland Park, Kansas. I prepared Appellant’s brief, which I have submitted with my application, and I argued the cause.

5. *Hall v. Kansas Farm Bureau*, 274 Kan. 263, 50 P.3d 495 (2002). I represented Gary Hall, former President of the Kansas Farm Bureau, on appeal of the Riley County District Court’s entry of summary judgment in favor of the Kansas Farm Bureau on Hall’s employment-related claims. The Farm Bureau was represented by Edward Bailey, Topeka, Kansas. Due to the unique nature of the claims presented, the Kansas Supreme Court directed transfer from the Kansas Court of Appeals prior to oral argument. I prepared Appellant’s Brief, which is submitted with my application, and I argued the cause.

6. *Marcus v. Kansas Department of Revenue*, 170 F.3d 1305 (10th Cir. 2000). I represented Joel Marcus on appeal of the Kansas District Court’s dismissal of Marcus’ claim for alleged violations of the Americans with Disabilities Act. The Kansas Department of Revenue was represented by Brian Cox, Kansas Assistant Attorney General, Topeka, Kansas. The Tenth Circuit reversed the District Court’s dismissal and remanded for further proceedings. I participated actively with co-counsel in preparation of Appellant’s Brief but did not argue the cause.

7. *Sav-A-Trip, Inc. v. Belfort*, 164 F.3d 1137 (8th Cir. 1999). I represented Sav-A-Trip, Inc. on Respondents' appeal of the District Court's confirmation of a \$712,000.00 securities arbitration award in favor of Sav-A-Trip. Respondents were represented by Anthony Joseph Romano, Kansas City, Missouri. The Eighth Circuit affirmed the confirmation of the arbitration award. I participated actively with co-counsel in preparation of Appellant's Brief but did not argue the cause.

I have maintained an active, prominent practice in securities arbitration and litigation. In 2007 and 2008, I was recognized as a Missouri "Super Lawyer" for my securities practice. I have served as lead counsel in securities matters in at least 10 states, and I have achieved substantial awards or settlements from every major Wall Street firm. I primarily represent investors in claims against brokerage firms and financial advisors, though I also represent brokerage firms and individual advisors. Although most of my matters are resolved by private, confidential settlements, the following are a few of my recent, publicly-reported cases:

Securities Arbitration:

1. *Routh, et al., v. Barber, et al.*, Financial Industry Regulatory Authority Case No. 07-02704. I represented Steve and Christy Routh in this Kansas arbitration against their financial advisors for alleged unsuitable retirement investments. The advisors were represented by a Milwaukee, Wisconsin law firm and by Faegre & Benson, Des Moines, Iowa. Following a three-day hearing in September, 2008, the arbitrators awarded my clients \$168,000.00 in actual damages.

2. *Boston v. Suiter, et al.*, National Association of Securities Dealers Case No. 05-6530. I represented John and Virginia Boston in this Missouri arbitration against their financial advisors for alleged unsuitable retirement investments. The advisors were represented by Donald Mehan, Moline, Shostak, & Mehan, St. Louis, Missouri. Following a three-day hearing in October, 2006, the arbitrators awarded my clients \$104,000.00 in compensatory damages and \$74,000.00 in punitive damages.

3. *Hopkins v. UMB Financial Services, Inc., et al.*, National Association of Securities Dealers Case No. 04-3756. I represented Dorothy Hopkins in this Missouri arbitration against her financial advisors for alleged improper securities sales. The advisors were represented by Perry Brandt, Bryan Cave LLP, Kansas City, Missouri. Following a four-day hearing in April, 2005, the arbitrators awarded my client \$61,032.00 in damages and \$17,250.00 in attorney's fees, with interest on these sums.

4. *DeShazo v. Edward D. Jones & Co., et al.*, National Association of Securities Dealers Case No. 03-5851. I represented Karen DeShazo in this Kansas arbitration against her financial advisors for alleged violations of Kansas' securities laws. The advisors were represented by in-house counsel for Edward Jones. Following a four-day hearing in December, 2004, the arbitrators awarded my client \$193,550.00 in damages.

Securities Litigation:

1. *Chaiet v. Allen, et al.*, United States District Court for the Western District of Missouri Case No. 05-cv-00725-ODS. I served as co-counsel for Plaintiff in this shareholder derivative action against the officers and directors of American Italian Pasta Company. Defendants were represented by several of the major law firms in Kansas City, Missouri. The case settled in December, 2008.

2. *CNBS, LLC v. Dougherty, et al.*, Johnson County, Kansas District Court 07CV02809. I represented CNBS, a Kansas City-area brokerage firm, in this 2007 injunctive relief action against two stockbrokers for alleged breaches of their non-compete agreements. Defendants were represented by John Shaw, Berkowitz, Oliver, et al., Kansas City, Missouri. The Court entered the requested injunctive relief in favor of CNBS.

3. *Bank of America Investment Services, Inc. v. Martin*, United States District Court for the Western District of Missouri Case No. 06-cv-00714-FJG, and *Bank of America Investment Services, Inc. v. Harrison*, Case No. 06-cv-0092-ODS. I served as co-counsel for Bank of America in these 2006 injunctive relief actions against two Kansas City-area stockbrokers for alleged breaches of their non-compete agreements. Defendants were represented by Richard Fritz, Kansas City, Missouri. Both actions settled during the injunction proceedings.

I also represent individuals and businesses in a broad variety of commercial litigation matters in the federal and state courts. The following are two cases I tried in 2008:

1. *Abrams v. McNeil, et al.*, Circuit Court of Jackson County, Missouri, Case No. 04CV228310-01. Following a December, 2008 bench trial, the Court entered judgment in favor of my client, Allan Abrams, on his claim for alleged breach of a settlement agreement, promissory note, and personal guaranty. The Court awarded all requested damages, including \$372,664.51 in actual damages and \$352,614.40 in interest. Defendants were represented by Richard Helfand, Kansas City, Missouri.

2. *L.G. Barcus & Sons, Inc. v. Faherty*, District Court of Wyandotte County, Kansas, Case No. 05CV314. I represented Defendant Bill Faherty in an August, 2008 bench trial of Plaintiff's claim for Faherty's alleged breach of the non-compete clause in his engineering employment agreement. L.G. Barcus, which was represented by Ryan Denk, Kansas City, Kansas, sought more than \$1,000,000.00 in liquidated and consequential damages from my client. The case settled during the third day of trial.

In addition to my litigation/arbitration advocacy, I serve as a securities and commercial arbitrator, and as a mediator. I also represent clients in securities, insurance, and employment administrative proceedings before federal, state and local agencies.

11. Describe any additional legal experience that you believe may be relevant to the decision of the commission (e.g., work as a law professor, in government, as corporate or other legal counsel).

I am a court-approved mediator for the Missouri state courts, and for the United States District Courts for the Western District of Missouri and the District of Kansas. I am an arbitrator for the Financial Industry Regulatory Authority and the American Arbitration Association.

12. List all bar associations and other professional societies of which you are a member, with any offices held and dates.

I was the 2008 Securities Committee Chair for the Kansas City Metropolitan Bar Association. I am a member of the Missouri Bar and the Kansas Bar Association. I also am a member of the Public Investors Arbitration Bar Association (“PIABA”), which is a national association of attorneys who represent parties in securities arbitration. I have served on various PIABA committees.

13. List any professional articles or books authored by you that have been published or any special recognition or award of a professional nature you have received.

I have prepared written materials and given presentations at numerous continuing legal education programs sponsored by the Missouri Bar Association, the Kansas City Metropolitan Bar Association, the University of Missouri, the Kansas Bar Association, and the Public Investors Arbitration Bar Association, as well as programs sponsored by various businesses.

I have been an “av” rated attorney in Martindale Hubbell for many years. I was recognized as a Missouri “Super Lawyer” by that publication in 2007 and 2008. I am a member of the Million Dollar Advocates Forum, which is an organization of trial attorneys who have achieved verdicts or settlements in excess of one million dollars.

14. Describe your community activities, including any organizations not listed elsewhere with which you are affiliated.

I currently am the Chair of the Church Council at Platte Woods United Methodist Church, Platte Woods, Missouri. I have served in numerous other positions at the Church over the past 20 years. I am a Past President of the Board of Trustees of the Oakhill Day School, a 300-student, non-sectarian, pre-K through 7th grade school in Gladstone, Missouri. I have held various volunteer positions with the United Way, and I have coached numerous children’s sports teams for over a decade.

15. Do you now hold or have you ever held an elective or an appointive public office or position? If yes, provide details.

No.

16. Provide the branches and dates of (a) military service or (b) other public service not otherwise disclosed in this application. If discharged from the military, state whether the discharge was other than honorable.

I have not served in the military, but my wife, Leonora Miller, has been a member of the Army and the Army Reserve for more than twenty years, and she has been on active duty at various times during Operation Iraqi Freedom.

17. State whether you are able, with or without a reasonable accommodation, to perform the essential functions of being an appellate judge, including participating in oral argument; performing legal research; communicating clearly and effectively, both orally and in writing; supervising the lower courts, serving on court committees and performing other administrative functions; and expeditiously deciding issues coming before the court.

I am able to perform the functions without accommodation.

18. Were you ever refused admission to the bar of Missouri or the bar of another state or the federal courts? If yes, provide details.

No.

19. Have you ever been disciplined, admonished or cited for breach of ethics or professional conduct by the Supreme Court of Missouri or by any court or bar association or committee thereof? If yes, provide details.

No.

20. If you are or were a member of the judiciary of the State of Missouri, please state:

- a) Whether an order of discipline ever has been entered against you by the Supreme Court of Missouri for breach of the Code of Judicial Conduct or the Canons of Judicial Conduct. If yes, provide details.

Not applicable.

- b) Whether a reprimand or admonition ever has been entered against you by the Commission on Retirement, Removal and Discipline for any of the causes specified in Supreme Court Rule 12.07. If yes, provide details.

Not applicable.

21. Have you have ever been held in contempt of court? If yes, provide details.

No.

22. Have you ever been sued by a client or been a party to any other litigation, other than as guardian ad litem, plaintiff ad litem, or defendant ad litem?

If your answer is yes, state the style of the case, where it was filed, and explain in detail. If you are a judge and you have been sued in your judicial capacity, list only those cases where you are or were other than a nominal party.

I have never been sued by a client, nor have I had a client complaint. I have been a party defendant in the following two matters:

1. *Kearns v. Kumar, et al.*, Case No. 00-cv-00177-NKL, United States District Court for the Western District of Missouri, filed February, 2000. A stockbroker, whom I had named as a defendant in a securities arbitration then pending before the National Association of Securities Dealers, filed this pro se lawsuit against my client in the arbitration, my co-counsel, and me, alleging he had been slandered in the arbitration proceedings. Plaintiff dismissed the lawsuit in June, 2000 upon the settlement of the underlying arbitration. Neither the other defendants nor I was required to plead prior to dismissal of the lawsuit, nor did defendants make any payment to Plaintiff.

2. *Bosilevac v. Pakel, et al.*, Case No. 95-cv-02314-KHV, United States District Court for the District of Kansas, filed July, 1995 and *Kramar v. Criticos*, et al., Case No. 95CV08368, District Court of Johnson County, Kansas, filed July, 1995. Mr. Bosilevac and Mr. Kramar, who had received summary judgment as defendants in an earlier federal court action, filed these companion lawsuits against my clients, who were the plaintiffs in the prior action, and against me, alleging malicious prosecution. In the prior action, I represented six investors in a claim against the company in which they had invested, and against eight of the company's officers and directors, two of whom were Mr. Bosilevac and Mr. Kramar. The matters settled during the discovery stage. I believe that my law firm, Nygaard & Miller, paid a \$10,000.00 deductible to our professional liability insurance company for resolution of the matters.

22. Have you ever been convicted or received a suspended imposition of sentence for a felony or misdemeanor in state, federal or military court? (*Note that this question does not require that traffic offenses or other infractions be listed.*)

No.

If your answer is yes, state the style of the case, where it was filed, and explain in detail.

24. Are you delinquent in the payment of any federal, state, county or city taxes? If yes, provide details.

No.

25. You must attach to this application at least one, but not more than three, writing samples that comply with the requirements set out in the instructions for applicants.

I have attached three writing samples from my appellate work:

1. Brief of Appellant, *Packard v. Credit Solutions of America*, Kansas Court of Appeals No. 08-100231 A.

2. Brief of Appellants, *Sampson v. Biomat, Inc.*, et al., Kansas Court of Appeals No. 02-89522-A.

3. Brief of Appellant, *Hall v. The Kansas Farm Bureau*, Kansas Court of Appeals No. 01-87848-A.

26. List/describe any additional honors or awards you have received, activities you have performed, or any other information not set out above that demonstrates the quality of your work as an attorney or that you otherwise believe is relevant to the commission's decision.

I am a member of the Jefferson Club at the University of Missouri, which is an organization of donors who have given or pledged more than \$25,000.00 to the University. I will be glad to provide anything I may have omitted that would be helpful to the commission.

Please list the names of *five* persons whom you will ask to provide letters of reference for you with respect to your judicial qualifications. Do **not** list as a reference a judge of the court involved. As to each of the (5) references, **please provide name, title, mailing address, telephone and e-mail address. Please note that it is your responsibility to contact your references**, although if you intend to use as a reference a federal judge or other individual who only can provide a reference upon a specific request by the interviewing authority, please advise the commission and it will send that reference such a request. As to all references, it is your responsibility to see that they send the requested letters in a timely manner.

1. Robert G. Bailey
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And Assistant Dean
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2. Roger C. Geary
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5. W. Perry Brandt
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Provide your references with the attached Guidelines for References. The commission must receive your letters of reference, **via e-mail**, to judgevacancy@courts.mo.gov, by the date indicated in the Instructions to Applicants.